

#### § 4.1373

(b) not less than 10 days to file an amended response.

[59 FR 54326, Oct. 28, 1994, as amended at 67 FR 61511, Oct. 1, 2002]

#### § 4.1373 Hearing.

(a) If a hearing is requested, the administrative law judge shall convene the hearing within 90 days of receipt of the responses under § 4.1372(b). The 90-day deadline for convening the hearing may be waived for a definite time by the written agreement of all parties, filed with the administrative law judge, or may be extended by the administrative law judge, in response to a motion setting forth good cause to do so, if no other party is prejudiced by the extension.

(b) The administrative law judge shall give notice of the hearing at least 10 days in advance of the date of the hearing.

[59 FR 54362, Oct. 28, 1994; 59 FR 56573, Nov. 14, 1994]

#### § 4.1374 Burdens of proof.

(a) OSM shall have the burden of going forward to present a prima facie case of the validity of the notice of proposed suspension or rescission or the notice of suspension or rescission.

(b) The permittee shall have the ultimate burden of persuasion by a preponderance of the evidence that the notice is invalid.

[59 FR 54326, Oct. 28, 1994, as amended at 67 FR 61512, Oct. 1, 2002]

#### § 4.1375 Time for initial decision.

The administrative law judge shall issue an initial decision within 30 days of the date the record of the hearing is closed, or, if no hearing is held, within 30 days of the deadline for filing responses under § 4.1372(b).

#### § 4.1376 Petition for temporary relief from notice of proposed suspension or rescission or notice of suspension or rescission; appeals from decisions granting or denying temporary relief.

(a) Any party may file a petition for temporary relief from the notice of proposed suspension or rescission or the notice of suspension or rescission in conjunction with the filing of the re-

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quest for review or at any time before an initial decision is issued by the administrative law judge.

(b) The petition for temporary relief shall be filed with the administrative law judge to whom the request for review has been assigned. If none has been assigned, the petition shall be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203 (Telephone 703–235–3800).

(c) The petition for temporary relief shall include:

(1) A statement of the specific relief requested;

(2) A detailed statement of why temporary relief should be granted, including—

(i) A showing that there is a substantial likelihood that petitioner will prevail on the merits, and

(ii) A showing that the relief sought will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air or water resources;

(3) A statement whether the petitioner requests an evidentiary hearing.

(d) Any party may file a response to the petition no later than 5 days after it was served and may request a hearing even if the petitioner has not done so.

(e) The administrative law judge may hold a hearing on any issue raised by the petition within 10 days of the filing of responses to the petition, and shall do so if a hearing is requested by any party.

(f) The administrative law judge shall issue an order or decision granting or denying the petition for temporary relief within 5 days of the date of a hearing on the petition or, if no hearing is held, of service of the responses to the petition on all parties.

(g) The administrative law judge may only grant temporary relief if:

(1) All parties to the proceeding have been notified of the petition and have had an opportunity to respond and a hearing has been held if requested;

(2) The petitioner has demonstrated a substantial likelihood of prevailing on the merits; and

(3) Temporary relief will not adversely affect public health or safety or